

MAR 11 2008

Board of Vocational Nursing
and Psychiatric Technicians

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2002-1741

**JAMES MICHAEL BRACKEN, a.k.a. JAMES
BRACKEN, a.k.a. JAMES M. BRACHEN,
a.k.a. JAMES M. BRACKEN, a.k.a. JIM
BRACKEN, a.k.a. MICHAEL J. BRACKEN**
295 Duncan Hill Road
Auburn, California 95603

ACCUSATION

Vocational Nurse License No. VN 182818

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this
Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

2. On or about November 18, 1997, the Board issued Vocational Nurse
License No. VN 182818 to James Michael Bracken, also known as James Bracken, James M.
Bracken, James M. Bracken, Jim Bracken, and Michael J. Bracken ("Respondent"). Respon-
dent's Vocational Nurse License No. VN 182818 ("license") was in full force and effect at all
times relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.

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1 (c) Be convicted of a criminal offense involving possession of any
2 narcotic or dangerous drug, or the prescription, consumption, or
3 self-administration of any of the substances described in subdivisions
4 (a) and (b) of this section, in which event the record of the conviction
5 is conclusive evidence thereof

6
7 7. Code section 2878.6 states:

8 A plea or verdict of guilty or a conviction following a plea of nolo
9 contendere made to a charge substantially related to the qualifications,
10 functions and duties of a licensed vocational nurse is deemed to be a
11 conviction within the meaning of this article. The board may order the
12 license suspended or revoked, or may decline to issue a license, when
13 the time for appeal has elapsed, or the judgment of conviction has been
14 affirmed on appeal or when an order granting probation is made
15 suspending the imposition of sentence, irrespective of a subsequent
16 order under the provisions of Section 1203.4 of the Penal Code
17 allowing such person to withdraw his plea of guilty and to enter a plea
18 of not guilty, or setting aside the verdict of guilty, or dismissing the
19 accusation, information or indictment.

20 8. Code section 4022 states:

21 "Dangerous drug" or "dangerous device" means any drug or device
22 unsafe for self-use in humans or animals, and includes the following:

23 (a) Any drug that bears the legend: "Caution: federal law prohibits
24 dispensing without prescription," "Rx only," or words of similar
25 import.

26 (b) Any device that bears the statement: "Caution: federal law restricts
27 this device to sale by or on the order of a -----," "Rx only," or words
28 of similar import, the blank to be filled in with the designation of the
practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be
lawfully dispensed only on prescription or furnished pursuant to
Section 4006.

Regulatory Provision

9. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license
pursuant to Division 1.5 (commencing with Section 475) of the
Business and Professions Code, a crime or act shall be considered to
be substantially related to the qualifications, functions or duties of a
licensed vocational nurse if to a substantial degree it evidences present
or potential unfitness of a licensed vocational nurse to perform the
functions authorized by his license in a manner consistent with the
public health, safety, or welfare. Such crimes or acts shall include but
not be limited to those involving the following:

. . . .

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1 (f) Any crime or act involving the sale, gift, administration, or
2 furnishing of "narcotics or dangerous drugs or dangerous devices" as
defined in Section 4022 of the Business and Professions Code.

3 COST RECOVERY

4 10. Code section 125.3 provides, in pertinent part, that the Board may request
5 the administrative law judge to direct a licentiate found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

9 11. "Benzodiazopine" is a generic classification for drugs consisting of
10 Schedule IV controlled substances within the meaning of Health & Safety ("H&S") Code section
11 11057, and dangerous drugs, within the meaning of Code section 4022, in that it requires a
12 prescription under federal law.

13 12. "Paxil," a brand name for Paroxetine Hydrochloride, is a dangerous drug
14 within the meaning of Code section 4022 in that it requires a prescription under federal law.

15 FIRST CAUSE FOR DISCIPLINE

16 (Criminal Convictions)

17 13. Respondent is subject to disciplinary action pursuant to Code section
18 2878, subdivision (f), in that he was convicted of crimes which are substantially related to the
19 qualifications, functions, and duties of a licensed vocational nurse, as follows:

20 a. On or about November 4, 2004, in the criminal proceeding titled *People v.*
21 *James Michael Bracken* (Super. Ct. Placer County, 2004, Case No. 62-044692), Respondent was
22 convicted by the court on his plea of nolo contendere to violations of Vehicle Code sections
23 23152, subdivision (a) (driving under the influence of alcohol or drugs), and 2800.1, subdivision
24 (a) (evading a peace officer in a vehicle), both misdemeanors. The circumstances of the crimes
25 are as follows: On or about July 8, 2004, a peace officer with the Auburn Police Department was
26 dispatched to the 1700 block of Arroyo Drive to conduct a welfare check on a subject, who was
27 sitting in a white van screaming. Upon his arrival, the officer found Respondent sitting in the
28 driver's seat of the van, slumped over the steering wheel. Respondent's eyes were bloodshot and

1 watery and he had a blank stare. Respondent put the van in drive and began to roll forward. The
2 officer instructed Respondent to stop the van, but Respondent accelerated at a high rate of speed
3 and fled the scene. The officer returned to his patrol car and pursued Respondent Southbound on
4 Arroyo Drive, with his emergency lights and siren activated. Respondent stopped the van in the
5 middle of the road and was immediately placed under arrest for driving under the influence. The
6 officer observed that Respondent had a difficult time standing on his own, his eyes were
7 bloodshot and watery, his speech was slow and slurred, and there was a strong odor of an
8 alcoholic beverage coming from his breath and person. The officer located an open bottle of
9 Winner's Vodka and several packs of 25 mg Paxil in the van. Respondent later underwent a drug
10 and alcohol screen and tested positive for Benzodiazepines. Respondent's blood alcohol level
11 was determined to be thirty-one percent (31%).

12 b. On or about September 16, 2003, in the criminal proceeding titled *People*
13 *v. James Bracken* (Super. Ct. Placer County, 2003, Case No. 62-034935), Respondent was
14 convicted by the court on his plea of nolo contendere to a violation of Vehicle Code section
15 23152, subdivision (a) (driving under the influence of alcohol or drugs), a misdemeanor. The
16 circumstances of the crime are as follows: On or about March 23, 2003, Respondent willfully
17 and unlawfully, while under the influence of an alcoholic beverage and/or a drug and/or under
18 their combined influence, drove a vehicle. Respondent was determined to have a blood alcohol
19 content of twenty-three percent (.23%).

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Use of Dangerous Drugs and Consumption of Alcoholic Beverages** 22 **to an Extent or in a Manner Dangerous or Injurious to Oneself or Others)**

23 14. Respondent is subject to disciplinary action pursuant to Code section
24 2878, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section
25 2878.5, subdivision (b), in that on or about March 23, 2003, and July 8, 2004, Respondent used
26 the dangerous drug Paxil and consumed alcoholic beverages to an extent or in a manner
27 dangerous or injurious to himself, others, and the public, as set forth in paragraph 13 above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Conviction of Crimes Involving Use of Dangerous Drugs and
3 Consumption of Alcoholic Beverages)


4 15. Respondent is subject to disciplinary action pursuant to Code section
5 2878, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section
6 2878.5, subdivision (c), in that on or about September 16, 2003, and November 4, 2004,
7 Respondent was convicted of criminal offenses involving the use of dangerous drugs and
8 consumption of alcoholic beverages, as set forth in paragraph 13 above.

9 PRAYER

10 **WHEREFORE**, Complainant requests that a hearing be held on the matters
11 herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
12 Technicians issue a decision:

- 13 1. Revoking or suspending Vocational Nurse License No. VN 182818, issued
14 to James Michael Bracken, also known as James Bracken, James M. Brachen, James M.
15 Bracken, Jim Bracken, and Michael J. Bracken;
- 16 2. Ordering James Michael Bracken, also known as James Bracken, James
17 M. Brachen, James M. Bracken, Jim Bracken, and Michael J. Bracken, to pay the Board of
18 Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: March 11, 2008

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24 
25 TERESA BELLO-JONES, J.D., M.S.N., R.N.
26 Executive Officer
27 Board of Vocational Nursing and Psychiatric Technicians
28 Department of Consumer Affairs
State of California
Complainant